

NOT INCLUDED IN
BOUND VOLUMES

LBH
Las Vegas, NV

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAESAR'S ENTERTAINMENT CORPORATION
d/b/a RIO ALL-SUITES HOTEL AND CASINO

Employer

and

Case 28-RC-006747

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT
COUNCIL 15, LOCAL 159

Petitioner

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on January 5, 2011, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 2 votes for and 4 against the Union, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings¹ and recommendations only to the extent consistent with this Decision and Direction of Second Election.

¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Union's Objections 2 and 4.

The hearing officer recommended sustaining the Union's Objection 3, alleging that the Employer interfered with the election by promising wage increases and 401(k) contributions during the critical period. At a meeting attended by all bargaining-unit employees 2 days before the election, the Employer promised employees wage increases if they rejected the Union. We agree with the hearing officer that this promise reasonably tended to interfere with employees' free choice in that election and requires setting aside the election.²

The hearing officer recommended sustaining the Union's Objection 1, alleging that the Employer maintained overbroad work rules that interfered with employees' free choice in the election. The Employer argues, and we agree, that the Regional Director should not have entertained this objection because it did not comply with Sec. 102.69(a) of the Board's Rules and Regulations. Section 102.69(a) requires that any party filing election objections provide "a short statement of the reasons" for each objection. Further, within 7 days of the filing of objections, "the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections." The Union's Objection 1 did not identify the rules it claimed were objectionable, and the Union did not provide supporting evidence within 7 days, as required. In fact, the Union did not identify the allegedly objectionable rules until it filed its post-hearing brief. In those circumstances, we find that Objection 1 is not properly before us for consideration on the merits. It is therefore dismissed. See, e.g., *Don Allen Midtown Chevrolet, Inc.*, 113 NLRB 879, 880 (1955).

Because the Board is ordering a new election on other grounds, Member Hayes finds it unnecessary to pass on the Employer's exceptions regarding Objection 1.

² We find it unnecessary to pass on whether the Employer's statement regarding 401(k) contributions was also objectionable.

Accordingly, we sustain Objection 3, set aside the election, and direct that a new election be held.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the election directed herein and who retained their employee status during the eligibility period and their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the date of the election directed herein, and employees engaged in an economic strike that began more than 12 months before the date of the election directed herein and who have been permanently replaced. Those eligible shall vote whether they

desire to be represented for collective bargaining by International Union of Painters and Allied Trades, District Council 15, Local 159.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1996); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., August 12, 2011.

Wilma B. Liebman,

Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD